

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

April 4, 2011

The Honorable Jacob Lew
Director
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Director Lew:

Under review at your Office of Information and Regulatory Affairs is the Environmental Protection Agency's draft final rule, "TSCA Inventory Update Modifications" (IUR)¹. We urge the Administration to withdraw the proposed rule because it fails to meet the requirements of the Paperwork Reduction Act and President Obama's Executive Order 13563, and introduces needless new burdens on the U.S. economy.

The Paperwork Reduction Act requires that each agency (1) manage information resources to reduce information collection burdens on the public and (2) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to you for review is necessary for the proper performance of the functions of the Agency, including that the information has practical utility.

President Obama's Executive Order 13563 requires that each agency:

- propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs;
- tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and

¹ TSCA Inventory Update Reporting Modifications, 40 CFR Parts 704, 710, and 711 (August 13, 2010) [EPA-HQ-OPPT-2009-0187; FRL-8833-5].

- select approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The rule proposed by EPA in 2010 (expanding the 2006 IUR) would impose new and needless cost burdens on the U.S. economy with no apparent purpose or benefit. It is, therefore, contrary to the requirements of the Paperwork Reduction Act and the President's own regulatory standards. In its proposal, EPA outlined a complex enlargement of the IUR reporting program through several modifications to the existing rule, including increased frequency of reporting and breadth of information required. However, the proposal fails to detail how the additional data will be used to improve chemical management programs at EPA or further the Agency's mission. Because EPA has not estimated benefits it does not justify the costs to the regulated community.

The rule, if issued as proposed, would include the following unwarranted and burdensome modifications to the existing program, without identifying associated benefits. It would:

- **Expand the program from reporting to data-gathering.** EPA proposed to replace the "not readily obtainable" standard with the more stringent "known to or reasonably ascertainable by" standard. This expands the IUR from a reporting program to a costly data-gathering exercise. Furthermore, requiring respondents to report data that are not in their possession is likely to result in submission of poor quality data and of information that constitutes the intellectual property of someone else. The increased analysis and reporting burden of this change has significant adverse economic consequences, especially for many small businesses.
- **Expand reporting of processing and use data, one of the most burdensome aspects of the program.** EPA proposed to eliminate the 300,000 lb. threshold for processing and use reporting, thereby requiring all reporters of non-excluded substances to report information in all parts of the IUR Form U. Eliminating this threshold could double the reporting burden imposed on sites that manufacture or import chemicals in volumes below the 300,000 threshold.
- **Discourage beneficial recycling of byproducts.** The proposed "exemption" of byproducts sent for "extraction" (or recycling) simply won't work. The guidance included with the proposed rule neither clarifies nor replaces the complicated and restrictive definition of "component chemical substance" provided to several industries that currently send byproducts for recycling. For example, EPA's proposal excludes virtually all metals recovery from the intended exemption. While EPA created an "exclusion" for byproducts under the 2003 TSCA IUR rule in 710.3(d), EPA's subsequent, narrow interpretation would nullify that exclusion and unnecessarily burden those who send byproducts for recycling with extensive IUR reporting. This whipsaw approach to regulation and re-cycling stewardship must end.

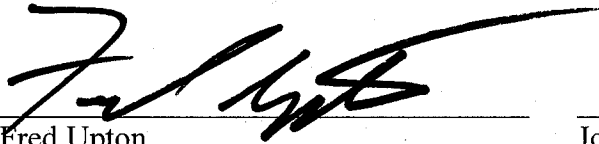
- **Needlessly increase the frequency of IUR reporting.** The Agency proposed to modify the IUR reporting cycle from a five-year to a four-year reporting frequency. We question the utility to government for the private sector to endure this burden sooner and more frequently.
- **Expand the program from single-year to multi-year reporting.** Currently, reporters submit production and volume information for the reporting year. EPA proposed to require submitters to report production volume for each of the five years since the last IUR principal reporting year. Thus, for the 2011 IUR, manufacturers (including importers) of subject chemicals would report the production volume for calendar years 2006, 2007, 2008, 2009, and 2010, dramatically increasing the reporting burden without demonstrating how these data will be useful to the EPA.
- **Make it harder and more costly to determine whether reporting is required.** EPA proposed to change the method used to determine whether a manufacturer or importer is subject to IUR reporting. Previously, reporting was required if the production volume of a chemical substance met or exceeded the 25,000 lb. threshold during the reporting year. EPA now would retroactively require reporting if thresholds were exceeded in any calendar year since the last principal reporting year. This is a de facto requirement that reporting entities assess volumes for each year to determine applicability. Requiring companies to collect and analyze four or five years of past data would be burdensome, and EPA has shown no specific need for the additional information.
- **Replace flexible reporting options with mandatory use of EPA's web-based CDX reporting system.** It is not clear whether EPA field tested the web-based reporting systems required to comply with the electronic reporting requirement. Any reporting system should be subject to rigorous testing before being established as the only option, particularly given the expanded reporting requirements as well as the potentially narrow reporting window.

On February 15, 2011, our Subcommittee on Environment and the Economy heard testimony about the impacts of EPA's interpretation of an exemption for byproducts within the context of this proposed rule. A witness speaking for Main Street businesses impacted by the rule detailed how the cost burden on the regulated community, including many small businesses, would be so great that many would simply stop recycling and instead send useful materials to the landfill. We, like these burdened businesses and citizens, see economic harm and perverse environmental incentives from the rule with no offsetting benefits.

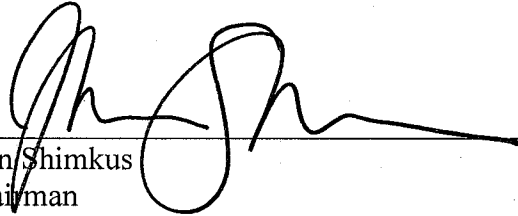
Despite possible revisions that could result from some of the many public comments, we are convinced that the Paperwork Reduction Act, the President's commitment to reducing needless burdens on the American public and the economy, and sound public policy require that the rule be withdrawn.

We look forward to your response by April 14, 2011. Should you require more information, please contact Committee staff David McCarthy at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: Mr. Cass Sunstein, Administrator
Office of Information and Regulatory Affairs

The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy